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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 JEFFREY T.,

9 Plaintiff,

Case No. 18-657-MLP

10 v.

ORDER

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13 **I. INTRODUCTION**

14 Plaintiff seeks review of the denial of his application for Supplemental Security Income.
15 Plaintiff contends the administrative law judge (“ALJ”) erred in discounting a medical opinion,
16 and in discounting his testimony. (Dkt. #10 at 1.) As discussed below, the Court AFFIRMS the
17 Commissioner’s final decision and DISMISSES the case with prejudice.

18 **II. BACKGROUND**

19 Plaintiff was born in 1965, has a high school diploma and some vocational training in
20 building maintenance, and has worked as a building maintenance mechanic, helicopter mechanic,
21 driver, and temporary laborer. AR at 35, 241-49. Plaintiff was last gainfully employed in
22 September 2011. AR at 189.

23 On February 26, 2015, Plaintiff protectively applied for benefits, alleging disability as of

1 September 1, 2011.¹ AR at 62, 146-51. Plaintiff's applications were denied initially and on
2 reconsideration, and he requested a hearing. AR at 83-86, 90-98. After the ALJ conducted a
3 hearing on January 12, 2017 (AR at 28-61), the ALJ issued a decision finding Plaintiff not
4 disabled. AR at 13-23.

5 Utilizing the five-step disability evaluation process,² the ALJ found:

6 Step one: Plaintiff has not engaged in substantial gainful activity since February 26,
7 2015.

8 Step two: Plaintiff's rheumatoid arthritis and status post bilateral carpal tunnel release
are severe impairments.

9 Step three: These impairments do not meet or equal the requirements of a listed
10 impairment.³

11 Residual Functional Capacity ("RFC"): Plaintiff can perform light work with additional
12 limitations: he can occasionally climb ladders and scaffolds, and frequently climb ramps
or stairs. He can perform work without concentrated exposure to extreme cold, vibration
and hazards. He can frequently handle and finger with the dominant right hand, and can
13 occasionally handle with the non-dominant left hand.

14 Step four: Plaintiff cannot perform past relevant work.

15 Step five: As there are other jobs that exist in significant numbers in the national
economy that Plaintiff can perform, he is not disabled.

16 AR at 15-22.

17 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
18 Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the
19 Commissioner to this Court.

20 **III. LEGAL STANDARDS**

21 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
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23 ¹ Plaintiff subsequently amended his alleged onset date to February 26, 2015. AR at 160.

² 20 C.F.R. §§ 404.1520, 416.920.

³ 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 security benefits when the ALJ's findings are based on legal error or not supported by substantial
2 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As
3 a general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
4 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
5 (cited sources omitted). The Court looks to "the record as a whole to determine whether the
6 error alters the outcome of the case." *Id.*

7 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
8 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
9 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
10 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
11 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
12 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
13 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas*
14 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than
15 one rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

16 IV. DISCUSSION

17 A. The ALJ Did Not Err in Discounting Dr. Yuen's Opinion

18 Dr. Yuen completed a DSHS physical evaluation form in October 2016, indicating that
19 Plaintiff could not perform even sedentary work due to his rheumatoid arthritis. AR at 350-52.
20 Specifically, Dr. Yuen found that Plaintiff's rheumatoid arthritis left him unable to sit, stand,
21 walk, lift, carry, handle, push, pull, reach, stoop, or crouch. AR at 351.

22 The ALJ summarized Dr. Yuen's opinion and found that it did not reflect the
23 improvement Plaintiff experienced via medication, as documented in the treatment record. AR

1 at 20-21. The ALJ also referenced Dr. Yuen's own findings that Plaintiff had only mild
2 rheumatoid arthritis with tenderness in his hands and fingers, but no swelling, diminished
3 strength, or other joint limitations. AR at 21. Finally, the ALJ found that Dr. Yuen's opinion
4 that Plaintiff could not stand or walk was entirely unsupported in the record, and suggests
5 "carelessness in filling out the evaluation." AR at 21.

6 Plaintiff argues that the ALJ's reasons for rejecting Dr. Yuen's opinion about his
7 limitations as to lifting, carrying, handling, pushing, and pulling are not legally sufficient.

8 1. *Legal Standards*

9 As a matter of law, more weight is given to a treating physician's opinion than to that of a
10 non-treating physician because a treating physician "is employed to cure and has a greater
11 opportunity to know and observe the patient as an individual." *Magallanes*, 881 F.2d at 751; *see*
12 *also Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). A treating physician's opinion, however,
13 is not necessarily conclusive as to either a physical condition or the ultimate issue of disability,
14 and can be rejected, whether or not that opinion is contradicted. *Magallanes*, 881 F.2d at 751. If
15 an ALJ rejects the opinion of a treating or examining physician, the ALJ must give clear and
16 convincing reasons for doing so if the opinion is not contradicted by other evidence, and specific
17 and legitimate reasons if it is. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1988). "This can
18 be done by setting out a detailed and thorough summary of the facts and conflicting clinical
19 evidence, stating his interpretation thereof, and making findings." *Id.* (citing *Magallanes*, 881
20 F.2d at 751). The ALJ must do more than merely state his/her conclusions. "He must set forth
21 his own interpretations and explain why they, rather than the doctors', are correct." *Id.* (citing
22 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)). Such conclusions must at all times be
23 supported by substantial evidence. *Reddick*, 157 F.3d at 725.

1 2. *Dr. Yuen's Opinion*

2 Plaintiff argues that contrary to the ALJ's finding, he did not experience improvement in
3 the use of his hands and wrists with treatment, as evidenced by Dr. Yuen's repeated medication
4 adjustments and notations indicating tenderness. (Dkt. 10 at 4-8.) It is true that Dr. Yuen
5 continued to adjust Plaintiff's medications to mitigate side effects, and did document Plaintiff's
6 reports of tenderness, but that evidence does not necessarily suggest that Plaintiff could not
7 perform *any* lifting, carrying, handling, pushing, pulling, or reaching, as Dr. Yuen concluded. As
8 noted by the Commissioner, Dr. Yuen's opinion describes Plaintiff's rheumatoid arthritis as
9 "moderate to severe," but his contemporaneous and recent treatment notes describe Plaintiff's
10 rheumatoid arthritis symptoms as "mildly active" and "improving," with "mild" hand and wrist
11 joint tenderness. *Compare* AR at 351 *with* AR at 366, 368, 371-73, 379-80.

12 Furthermore, as noted by the ALJ, Dr. Yuen's treatment notes indicate that despite the
13 mild tenderness in his upper extremity joints, Plaintiff experienced no loss of range of motion or
14 strength, and did not have swelling. *See, e.g.,* AR at 366, 372. Dr. Yuen's treatment notes are
15 consistent with the ALJ's RFC assessment, which limits Plaintiff to light work and frequent
16 handling/fingering with his dominant right hand and occasional handling with his left hand. AR
17 at 17. The ALJ reasonably found Dr. Yuen's treatment notes to be inconsistent with his opinion,
18 and did not err in discounting his opinion on that basis. *See Thomas*, 278 F.3d at 957 ("The ALJ
19 need not accept the opinion of any physician, including a treating physician, if that opinion is
20 brief, conclusory, and inadequately supported by clinical findings.").

21 Moreover, as noted by the ALJ, Dr. Yuen's inclusion of entirely unsupported limitations
22 unrelated to his treatment of Plaintiff's rheumatoid arthritis casts doubt on the reliability of his
23 entire opinion. Plaintiff does not appear to dispute that the ALJ properly failed to account for the

1 limitations identified by Dr. Yuen that do not pertain to his upper extremities (i.e., the sitting,
2 standing, walking, stooping, and crouching restrictions), and this selective challenge undermines
3 Plaintiff's argument. If the ALJ correctly found that Dr. Yuen was careless in completing his
4 form opinion, then that carelessness infects the entire opinion, not only the portions that Plaintiff
5 does not challenge.

6 Plaintiff also argues that the ALJ erred in failing to apply the "appropriate factors" set out
7 in the regulations regarding how ALJs should weigh medical opinions. (Dkt. 10 at 9-10 (citing
8 *Trevizo v. Berryhill*, 871 F.3d 664, 676 (9th Cir. 2017)).) Specifically, Plaintiff argues that the
9 regulations provide that Dr. Yuen's opinion should have been given more weight due to Dr.
10 Yuen's status as a treating physician and a specialist. *See* 20 C.F.R. § 416.927(c). Although the
11 regulations do indicate that the length of a treating relationship as well as the relevant of a
12 provider's specialty generally weigh in favor of assigning more weight to a medical opinion, the
13 regulations do not indicate that an ALJ *must* credit every treating specialist's opinion. *See id.*
14 Indeed, the ALJ noted that an opinion written by a claimant's treating rheumatologist would
15 ordinarily be entitled to great weight, but that other Section 927(c) factors — namely
16 supportability and consistency — suggest that the opinion is entitled to less weight. AR at 20.
17 This assessment is entirely consistent with the regulations and applicable case law.⁴ *See, e.g.,*

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19 ⁴ To the extent that Plaintiff suggests that the ALJ erred in failing to explicitly discuss each
20 factor listed in Section 927(c) (dkt. 17 at 5-6), Plaintiff is mistaken. The ALJ must consider
21 those factors, but a discussion of each factor is not necessary. *See Kelly v. Berryhill*, 732 Fed.
22 Appx. 558, 562-63 n.4 (9th Cir. May 1, 2018) (clarifying *Trevizo*, 871 F.3d at 676). In this case,
23 the ALJ's discussion of Dr. Yuen's opinion demonstrates a consideration of the Section 927(c)
factors because the ALJ weighed Dr. Yuen's treating relationship and specialty against the
unsupportability of his conclusions and the degree to which they were inconsistent with the
record. AR at 20-21. That the ALJ found that Dr. Yuen's opinion was too extreme, yet
accounted for some of degree of the restrictions he identified in the RFC assessment, suggests
that the ALJ appropriately considered the Section 927(c) factors. *See, e.g., Nicholl v. Berryhill*,
2018 WL 3702296, at *9 (C.D. Cal. Aug. 2, 2018) (distinguishing *Trevizo*, 871 F.3d at 676).

1 *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (affirming the ALJ’s rejection of a
2 medical opinion where “the ALJ noted that some of [the treating physician’s] recommendations
3 were so extreme as to be implausible and were not supported by any findings made by any
4 doctor, including [the treating physician]”).

5 Because the ALJ provided multiple specific and legitimate reasons to discount Dr.
6 Yuen’s opinion, her assessment of the opinion is affirmed.

7 **B. The ALJ Did Not Err in Discounting Plaintiff’s Subjective Testimony.**

8 The ALJ discounted Plaintiff’s subjective testimony because (1) the medical record
9 contained objective findings suggesting that Plaintiff’s limitations were not as severe as he
10 alleged; and (2) the treatment notes indicated that Plaintiff experienced improvement with
11 medication, and his remaining symptoms were less severe than alleged. AR at 18-20. Plaintiff
12 argues these reasons are not legally sufficient, and the Court will consider each reason in turn.

13 1. *Legal Standards*

14 It is the province of the ALJ to determine what weight should be afforded to a claimant’s
15 testimony, and this determination will not be disturbed unless it is not supported by substantial
16 evidence. A determination of whether to accept a claimant’s subjective symptom testimony
17 requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929; *Smolen v. Chater*, 80 F.3d 1273,
18 1281 (9th Cir. 1996). First, the ALJ must determine whether there is a medically determinable
19 impairment that reasonably could be expected to cause the claimant’s symptoms. 20 C.F.R.
20 §§ 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82. Once a claimant produces medical
21 evidence of an underlying impairment, the ALJ may not discredit the claimant’s testimony as to
22 the severity of symptoms solely because they are unsupported by objective medical evidence.
23 *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *Reddick*, 157 F.3d at 722.

1 Absent affirmative evidence showing that the claimant is malingering, the ALJ must provide
2 “clear and convincing” reasons for rejecting the claimant’s testimony.⁵ *Burrell v. Colvin*, 775
3 F.3d 1133, 1136-37 (9th Cir. 2014) (citing *Molina*, 674 F.3d at 1112). *See also Lingenfelter v.*
4 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). When evaluating a claimant’s subjective symptom
5 testimony, the ALJ must specifically identify what testimony is not credible and what evidence
6 undermines the claimant’s complaints; general findings are insufficient. *Smolen*, 80 F.3d at
7 1284; *Reddick*, 157 F.3d at 722.

8 2. Objective Findings

9 Plaintiff notes that an ALJ may not discount a claimant’s subjective statements solely
10 based on lack of corroboration in the objective medical record. (Dkt. 17 at 1.) That may be true,
11 but an ALJ does not err in considering the degree to which the objective record is consistent with
12 a claimant’s statements, along with other factors pertaining to the reliability of a claimant’s
13 statements. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (“While subjective pain
14 testimony cannot be rejected on the sole ground that it is not fully corroborated by objective
15 medical evidence, the medical evidence is still a relevant factor in determining the severity of the
16 claimant’s pain and its disabling effects.”); SSR 16-3p, 2017 WL 5180304, at *5 (Oct. 25, 2017)
17 (“A report of minimal or negative findings or inconsistencies in the objective medical evidence is
18 one of the many factors we must consider in evaluating the intensity, persistence, and limiting
19 effects of an individual’s symptoms.”).

20 Plaintiff complains that the ALJ acknowledges the existence of his rheumatoid arthritis

21 ⁵ In Social Security Ruling (“SSR”) 16-3p, the Social Security Administration rescinded SSR 96-
22 7p, eliminated the term “credibility” from its sub-regulatory policy, clarified that “subjective
23 symptom evaluation is not an examination of an individual’s character[,]” and indicated it would
more “more closely follow [its] regulatory language regarding symptom evaluation.” SSR 16-
3p. The Court continues to cite to relevant case law utilizing the term credibility, however.

1 and carpal tunnel symptoms at step two, and yet rejects his description of those symptoms as not
2 credible. (Dkt. 17 at 1-2.) This is not internally inconsistent, however, as Plaintiff suggests: at
3 step two, the ALJ considers whether a claimant's medically determinable impairments are
4 severe, and then in crafting the RFC the ALJ describes the most the claimant can do despite the
5 credible limitations caused by the medically determinable impairments. *See* 20 C.F.R. §
6 416.945(a). Plaintiff cites no authority requiring an ALJ to credit every alleged limitation caused
7 by an impairment found to be medically determinable, and the Court is not aware of any. The
8 ALJ did not err in considering whether the objective findings contained in the medical record
9 were consistent with Plaintiff's allegations, and accounting for his symptoms only to the degree
10 supported by the record. *See* 20 C.F.R. § 416.1529(c)(4) ("We will consider your statements
11 about the intensity, persistence, and limiting effects of your symptoms, and we will evaluate your
12 statements in relation to the objective medical evidence and other evidence, in reaching a
13 conclusion as to whether you are disabled. We will consider whether there are any
14 inconsistencies in the evidence and the extent to which there are any conflicts between your
15 statements and the rest of the evidence, including your history, the signs and laboratory findings,
16 and statements by your medical sources or other persons about how your symptoms affect
17 you.").

18 3. *Evidence of Improvement*

19 The ALJ summarized treatment notes indicating that Plaintiff's symptoms improved with
20 medication. AR at 18-20. Plaintiff disputes whether the record shows improvement, particularly
21 with his pain and fatigue. (Dkt. 10 at 11-12.) Plaintiff emphasizes that Dr. Yuen continued to
22 prescribe pain medication, despite purported improvement of his symptoms. (Dkt. 17 at 2-3.)
23 Plaintiff fails to address the multiple times he reported to Dr. Yuen that his symptoms were

1 improved and he was doing better. *See, e.g.*, AR at 371 (Plaintiff reports that “[o]verall, he feels
2 as though he is doing better”), 375 (Plaintiff reports that his agitation and irritability were “much
3 decreased” and his sleep was “much improved” with treatment and medication), 378 (Plaintiff
4 reports that his mood, sleep, agitation, and irritability were “markedly improved” with treatment
5 and medication), 379 (Plaintiff reports that his joint pain “decreased significantly” with
6 medication), 397 (Plaintiff reports “significant improvement in his joint symptoms”). These
7 treatment notes constitute substantial evidence that support the ALJ’s decision, and the ALJ did
8 not err in discounting Plaintiff’s allegations of more severe symptoms and limitations. *See*
9 *Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999) (affirming the
10 ALJ’s discounting of plaintiff’s allegations because, contrary to plaintiff’s claims of lack of
11 improvement, a physician reported that his symptoms improved with use of medication).

12 Because the ALJ provided clear and convincing reasons to discount Plaintiff’s
13 allegations, the ALJ’s assessment of Plaintiff’s testimony is affirmed.

14 V. CONCLUSION

15 For the foregoing reasons, the Commissioner’s final decision is AFFIRMED and this
16 case is DISMISSED with prejudice.

17 DATED this 22nd day of March, 2019.

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20 MICHELLE L. PETERSON
21 United States Magistrate Judge
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